

## LEASE AGREEMENT

This Lease has been entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, between the CITY OF TRAVERSE CITY, a Michigan municipal corporation, of 400 Boardman, Traverse City, Michigan, 49684, ("Landlord") and the CROOKED TREE ARTS COUNCIL, INC., a Michigan Nonprofit Corporation, of 461 East Mitchell, Petoskey, Michigan, 49770 ("Tenant").

In consideration of the mutual covenants herein contained, the Landlord and the Tenant agree as follows:

1. Premises. Landlord leases to Tenant, and Tenant hires from Landlord, on the terms and subject to the conditions herein contained, those portions of the building located at 322 Sixth Street, Traverse City, Michigan, commonly known as the Carnegie Building (Tax Parcel ID 28-51-103-015-10, the "Building"), which are attributed to the Tenant on the attached **Exhibit A**, which is hereby incorporated herein by reference (the "Premises"). Tenant may use the kitchen for a breakroom for its employees and volunteers and as a staging area for catered events. The kitchen may not be used for food preparation or for any commercial purpose. The Tenant may use the boardroom subject to the City's building use policy at no charge.

2. Term. The term of this Lease shall be three (3) years commencing on \_\_\_\_\_ and continuing through \_\_\_\_\_, subject to the provisions of this Lease Agreement.

3. Rent. The fixed annual rent for the Premises shall be TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) payable in quarterly installments. Rent for the first quarter shall be due upon execution of this Lease and quarterly thereafter upon invoice from the Landlord. The first quarterly payment may be prorated if necessary to account for the actual execution date of this Lease.

4. Utilities. Landlord shall pay all charges for water, sewer, heat, gas, electricity, and solid waste collection during the term of this Lease. Tenant shall pay all charges for telephone and internet service during the term of this Lease.

5. Acceptance of Premises. Except as Landlord and Tenant may otherwise agree in writing, the taking of possession by Tenant shall be conclusive evidence that, at such time, the Premises were in satisfactory or acceptable condition. Landlord has made no representations as to the condition of the Premises except as provided and Landlord shall not be liable for any latent or patent defects therein.

6. Use of the Premises. Tenant shall use and occupy the Premises for a community arts center offering services including exhibits, concerts, classes, lectures, and special events, and shall not use the Premises for any other purpose without the prior written consent of the Landlord. The Premises shall be open to the public during all hours of operation; generally public hours of operation shall be Monday through Saturday, 10:00am through 5:00pm. In general tickets for any ticketed events shall be made available to the general public for purchase. Tenant acknowledges that it has made its own determination as to the suitability of the Premises for this use, and that the Landlord has made no representations with respect thereto. Tenant agrees that its use and occupancy shall conform in all respects to all applicable statutes,

ordinances, rules, regulations and orders. Tenant shall not cause or permit any unsafe, offensive or obnoxious activity or public nuisance on the Premises. Tenant hereby expressly agrees that the Building will continue to serve as a polling location/precinct for elections with notification to Tenant as to election days. Tenant hereby expressly agrees that the upper level of the Cornwell Addition may be used by the Landlord during the term of this Lease for the Festival of Trains event, which has traditionally been held in December and January each year. During the Festival of Trains event the Landlord shall allow Tenant to use the upper level of the Carnegie portion of the Building in the same manner as it would otherwise be entitled to use the Premises according to the terms of this Lease. During the run of the Festival of Trains, Tenant will not be responsible for cleaning the bathrooms, hallways, kitchen or Upper Cornwell spaces.

7. Improvements, Alterations and Renovation. No construction, alteration, or remodeling may be made to the Premises without obtaining the prior express written permission of the City Manager. Any such alterations, additions or improvements and the construction of them shall be the legal and financial responsibility of the Tenant and shall in addition conform in all respects to all applicable statutes, ordinances, rules, regulations and orders. Tenant shall commit no waste on the premises. Landlord may install a permanent partition to allow for locked, restricted access to the upper level of the Cornwell Addition if requested by the Tenant. Landlord shall seek input from the Tenant regarding the placement and specifications of the wall prior to its construction, however Landlord shall make the final decisions regarding construction of the wall in its sole discretion. Landlord and Tenant shall split the cost of construction equitably as may be agreed upon by the parties.

8. Maintenance and Repair. Tenant shall maintain the Premises in a clean and sanitary condition and shall surrender the Premises at the termination of this Lease in as good a condition as when received, ordinary wear and tear excepted. Tenant agrees to be responsible for any damage caused to the Premises by Tenant or Tenant's sublessees, agents, employees, guests, or invitees.

Landlord shall maintain the building core & shell, including the HVAC system and other utility systems in the Building at its cost & expense. Landlord shall maintain the exterior areas of the property including the parking lot, snow removal of the parking lot and lawn/landscaping maintenance. However, Tenant shall maintain all sidewalks, entrances and walkways adjacent to the Building free of snow and ice and in a safe and passable condition.

Landlord shall provide bathroom cleaning services to the Building at least weekly. However, Tenant shall be responsible for day-to-day cleaning responsibilities, for example ensuring adequate bathroom supplies and cleanliness.

Tenant shall immediately submit to the City Manager a written report of any accident occurring on the Premises or any dangerous or unsafe condition or non-routine maintenance issue observed by the Tenant, its agents or employees.

9. Insurance. The Tenant shall procure and maintain during the life of this Lease, commercial general liability insurance on an occurrence basis with limited liability of not less

than one million dollars (\$1,000,000.00) per occurrence or aggregate combined single limit, personal injury, bodily injury and property damage. Such insurance shall include an endorsement stating that the City of Traverse City, all elected and appointed officials, all employees and volunteers thereof, shall be additional insured. Insurance policies required under this Lease shall include an endorsement stating that sixty (60) days advance written notice of cancellation, non-renewal, reduction or material change shall be sent to the City Clerk of the City of Traverse City, 400 Boardman Avenue, Traverse City, MI 49684.

10. Governmental Immunity. This Lease does not constitute a joint endeavor. The parties do not intend to waive any governmental immunity available to a party or an employee or official of a party.

11. Indemnification. To the fullest extent permitted by law, the Tenant agrees to defend, pay on behalf of, indemnify, and hold harmless the Landlord, its elected and appointed officials, employees and volunteers and others working on behalf of the Landlord, against any and all claims, demands, suits or loss, including all costs and attorneys' costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the Landlord, its elected and appointed officials, employees, volunteers or others working on behalf of the Landlord, by reason of alleged personal injury, including bodily injury or death or property damage or by reason of a tort of quasi-contract claim, which arises out of or is in any way connected or associated with this Lease Agreement. Tenant shall not be obligated to indemnify the City for the City's own negligence. This indemnification promise shall not be limited by reason of any insurance policy.

12. Signs. Tenant may erect signs on the Premises or the Building as shall be approved by the City Manager in writing prior to the installation thereof. Tenant shall maintain such signs during the term of this Lease and at the end of the term shall remove the same, at its own cost and expense. All signs must conform to the City's sign ordinance.

13. Tenant's Personal Property and Taxes. All personal property of Tenant kept on the Premises shall be at Tenant's sole risk, and Tenant hereby waives all right of recovery which it might otherwise have against Landlord for any loss, theft or damage that may result from Landlord's negligence. Tenant shall pay promptly when due all taxes levied on personal property owned by Tenant and shall promptly pay when due all real property taxes, if any, levied on the Premises.

14. Destruction - Fire or Other Cause. If the Premises shall be rendered untenable by fire or other casualty, the insurance proceeds may be used to repair the damage as speedily as possible. In the event such proceeds exceed the cost of such repair, such excess shall belong to Landlord. In the event the Building or the Premises is completely destroyed or so extensively damaged as to make restoration impractical or uneconomical, this Lease may be terminated by Landlord upon notice thereof to Tenant given within ninety (90) days of such damage. Landlord shall not be responsible for any damages suffered by Tenant as a result of said termination or interruption in Tenant's enjoyment of the Premises.

15. Laws and Regulations. Tenant shall, at Tenant's own cost and expense, comply

with all of the requirements of all laws and regulations, municipal, state and federal, now in force, or which may hereafter be in force, pertaining to the Premises, and the use and occupancy thereof.

16. Assignment and Subletting. Tenant shall not assign, or in any way encumber this Lease, or any part, right or interest thereof, nor shall Tenant let or sublet or permit any part of the Premises to be used or occupied by others for any reason without the prior written consent of the City Manager. No consent by Landlord to an assignment or subletting shall be construed to relieve Tenant from its obligations hereunder or from obtaining Landlord's written consent to any further assignment.

17. Access to Premises. Landlord shall have the right to enter upon the Premises at all reasonable business hours for the purpose of inspecting same, preventing waste, loss or destruction, making repairs or removing obstructions. These hours may be extended upon notice to Tenant or Tenant's agent, for repairs or alterations or to enforce any of Landlord's rights or powers under this Lease. If as a result of any entry by Landlord into the Premises it is necessary to Tenant to suspend operations therein, Tenant's sole remedy shall be abatement of rent for the period of time normal operations are suspended.

18. Subordination. This Lease is subject and subordinate to all underlying leases and mortgages which now or hereafter affect the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant shall execute promptly from time to time any certificate or other instrument that Landlord may request to confirm this subordination.

19. No Waiver. The failure of either party to enforce any covenant or condition of this Lease shall not be deemed a waiver thereof or of the right of either party to enforce each and every covenant and condition of this Lease. No provision of this Lease shall be deemed to have been waived unless such waiver is in writing.

20. Successors and Assigns. The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective distributees, successors, and, except as otherwise provided in this Lease, their assigns.

21. Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant's paying the rent and observing and performing all the terms, covenants and conditions on Tenant's part to be performed and observed, Tenant may peaceably and quietly enjoy the Premises leased hereby. Tenant and Landlord agree that in the event that the Premises become untenantable due to a casualty not covered by insurance, and not caused by Tenant, Tenant and the Landlord may elect to terminate this Lease with proper notice. Upon termination, neither party shall have any further rights or responsibilities under the terms of this Lease.

22. Impairment of Title. Tenant shall not, directly or indirectly, encumber or impair Landlord's title to the Premises.

23. Termination. Except as otherwise indicated, a party may terminate this Lease upon ninety (90) days advance written notice to the other party. All moveable personal property

of the Tenant or any other person other than Landlord shall be promptly removed by the Tenant at the termination of this Lease. Any fixtures or improvements placed on the Premises with the consent of the Landlord shall become the property of the Landlord upon termination of this Lease. Upon termination, rent shall be pro rated and any amount in excess of the duration of Tenant's occupancy shall be paid to Tenant.

24. Landlord's Remedies on Default. If Tenant defaults in the payment of rent, or defaults in performance of any other covenants or conditions of this Lease, Landlord may give Tenant notice of the default. If Tenant does not cure any default within seven (7) days after the giving of the notice, or, if such default cannot be completely cured within the period, Tenant does not commence the curing within fourteen (14) days and thereafter proceed with reasonable diligence and in good faith to cure the default, then Landlord may terminate this Lease on no less than seven (7) days' notice to Tenant. On the date specified in the notice, this Lease will terminate and Tenant will surrender the Premises to Landlord, but Tenant will remain liable for any default. If this Lease will have been so terminated by Landlord, Landlord may then retake possession of the Premises by any lawful means and remove Tenant or other occupants and its or their effect.

25. Notices. Any notice which either party may, or is required to, give hereunder may be served personally or sent by first class mail, postage prepaid, to the other party at their address above, or at such other places as may be designated in writing by the parties from time to time.

26. Non-Discrimination. The parties agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of this Agreement

27. Amendments. Any modifications of this Lease shall be in writing and signed by both parties.

28. Venue and Interpretation. Any and all suits for any and every breach of this Lease may be instituted and maintained in any court of competent jurisdiction in the County of Grand Traverse, State of Michigan. This Lease shall be governed by the laws of the State of Michigan, both as to interpretation and performance.

29. Employees. The personnel employed by the Tenant shall not be deemed to be employees of the Landlord and shall not be entitled to any fringe benefits the City affords its employees. Personnel employed by Tenant shall not hold themselves out as employees of the City.

30. Third Party Beneficiaries. This Agreement confers no rights or remedies on any third party, other than the parties to this Agreement and their respective successors and permitted assigns.

31. Severability. In the event that any part of this Lease shall be held invalid, the remainder thereof shall remain in full force and effect.

32. Entire Agreement. This Lease, together with all the items incorporated herein by reference, constitutes the entire agreement of the parties and there are no valid promises, conditions or understandings which are not contained herein.

33. Authority to Execute. The parties agree that the signatories appearing below have the authority and are duly authorized to execute this Lease on behalf of the party to the Lease.

IN WITNESS WHEREOF, the undersigned have executed this Lease as of the date first written above.

CITY OF TRAVERSE CITY

\_\_\_\_\_  
Michael Estes, Mayor

\_\_\_\_\_  
Benjamin C. Marentette, City Clerk

TENANT

\_\_\_\_\_  
Its:

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Jered Ottenwess, City Manager  
City of Traverse City

APPROVED AS TO FORM:

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Lauren Tribble-Laucht, City Attorney  
City of Traverse City

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